

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JABBAR COLLINS,

Petitioner,

-against-

ROBERT ERCOLE,

Respondent.

DORA L. IRIZARRY, U.S. District Judge:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 09 2010 ★

BROOKLYN OFFICE

FINAL JUDGMENT ORDER

08-CV-1359 (DLI) (CLP)

Upon all of the documents and proceedings before this court, and pursuant to the agreement and consent of the parties, it is hereby ORDERED, ADJUDGED and DECREED that the application of the petitioner, Jabbar Colliins, for a writ of habeas corpus is GRANTED in all respects as set forth in greater detail below.

The parties have stipulated and agreed to the following:

1. That, if the hearing on the amended petition were continued to its conclusion, the following facts, among others, would be established by a preponderance of the evidence:

- a. Detective Gerecitano made a statement to the King's County District Attorney's Office in May 2010, revealed thereafter to petitioner, that, prior to petitioner's trial, there was a recantation by witness Edwin Oliva of his statements implicating the petitioner in the crimes charged in underlying indictment; and
- b. The defense was not made aware of the recantation described by Detective Gerecitano, either prior to or during the criminal trial of the petitioner;

2. That the State's failure to disclose the recantation described by Detective Gerecitano to the defense constitutes a violation of petitioner's federal constitutional right to due process and a fair trial under *Brady v. Maryland*, 373 U.S. 83 (1963), as such non-disclosure was material to the outcome of the trial, and thus necessitates vacating petitioner's conviction and sentence; and
3. That respondent, having reviewed the evidence as it now stands, has concluded that there is insufficient evidence with which to meet the State's burden of proving petitioner's guilt beyond a reasonable doubt at any re-trial.

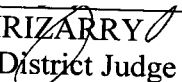
WHEREFORE, based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED, that the amended petition is GRANTED.

Accordingly, it is further hereby ORDERED that (1) petitioner's conviction and sentence are vacated and the underlying indictment (No. 2884/1994) is dismissed WITH PREJUDICE; (2) respondent is FOREVER prohibited from re-trying petitioner; and (3) petitioner is UNCONDITIONALLY RELEASED and, as agreed to by the parties, the New York State Department of Corrections is hereby directed to transport petitioner to Green Haven Correctional Facility forthwith, to be promptly released from said facility.

SO ORDERED.

DATED: Brooklyn, New York
June 8, 2010

S/DLI


DORA L. IRIZARRY
United States District Judge